

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,) CASE NO.: 1:18 CR 523
)
Plaintiff,) JUDGE SARA LIOI
)
v.)
)
JOSHUA ALLEN DUNCAN,) GOVERNMENT'S SENTENCING
) MEMORANDUM
Defendant.) _____
)

Now comes the United States of America, by and through its attorneys, Justin E. Herdman, United States Attorney, Henry F. DeBaggis and Scott C. Zarzycki, Assistant United States Attorneys, and respectfully submits the within Government's Sentencing Memorandum.

I. BACKGROUND

On September 11, 2018, Defendant Joshua Allen Duncan was named in a 4-count indictment in which he was charged with the robbery of the following banks:

- 1) July 17, 2018, PNC Bank, 330 E. Main Street, Ravenna, Ohio, \$12,430;
- 2) August 6, 2018, Dollar Bank, 7450 W. Ridgewood Drive, Parma, Ohio, \$5,776;
- 3) August 14, 2018, KeyBank, 6284 Pearl Road, Parma Heights, Ohio, \$2,969; and
- 4) August 21, 2018, Andover Bank, 1853 SR 45 North, Austinburg, Ohio \$6,444.

Previously, Defendant was charged with the robbery of \$9,580 from a KeyBank branch at 13681 Lorain Avenue, Cleveland, Ohio, on July 12, 2007. Defendant was convicted of the July 12,

2007, KeyBank robbery and on January 4, 2008, he was sentenced to 130 months custody to be followed by three years of supervised release (Doc#28; PageID#101; *PSI*). While serving his term of supervised release for the 2007 KeyBank robbery, Defendant robbed the four banks charged in the indictment in this case.

II. THE OFFENSE CONDUCT

1) July 17, 2018, PNC Bank Ravenna: \$12,430:

On July 17, 2018, at approximately 11:45 a.m., Defendant walked into the PNC Bank in Ravenna, Ohio with a mask over his face and armed with what a teller described as a black handgun. Defendant waived the handgun at bank employees and customers and ordered them to the ground. While customers were getting on the ground, Defendant said, “if you don’t start hurrying up I am going to start shooting people.” Defendant then stated to a bank teller, “you know what to do I want everything except ones and fives” then told the teller, “he had thirty seconds before he started shooting.”

With the weapon pointed at him, the teller put the money in Defendant’s bag, then Defendant exited the bank. PNC Bank was robbed of \$12,430.

2) August 6, 2018, Dollar Bank: \$5,776:

On August 6, 2018, at approximately 3:55 p.m., Parma Police responded to a bank security alarm call of a bank robbery of the Dollar Bank on W. Ridgewood Drive in Parma, Ohio. Three victims at the bank reported that a male brandishing a firearm entered the bank through the rear entrance wearing a white hooded sweatshirt and a white mask. Defendant then approached two bank tellers, pointed the firearm at both tellers and said, “not to look at his face and to give him all the money not to do anything fishy.” One of the tellers “froze in fear” at

which point Defendant pointed his weapon at another teller and ordered her to put her money in his bag.

After the teller put her money in Defendant's bag, she reached over and put the other teller's money in the bag as the other teller remained frozen in fear. Dollar Bank was robbed of \$5,776.

3) August 14, 2018, KeyBank: \$2,969:

On August 14, 2018, at approximately 9:22 a.m., KeyBank's silent alarm went off at the bank branch on Pearl Road in Parma Heights, Ohio. Witnesses later reported that the suspect walked into the bank wearing a hood, a black ball cap and a white mask covering his nose and mouth. Defendant then waived a black colored handgun and yelled for everyone to get on the ground. Defendant then threw a bag at a teller and ordered her to fill up the bag with cash and without any dye packs or bait money. Cash was placed in Defendant's bag and he left the bank with the bag. KeyBank was robbed of \$2,969.

4) August 21, 2018, Andover Bank: \$6,444:

On August 21, 2018, at approximately 2:05 p.m., Defendant walked into Andover Bank in Austinburg wearing a hooded sweatshirt and a white ski mask. A witness, who was a former Andover Bank teller who was robbed before, saw Defendant walk into the bank and suspected that he was going to rob the bank so she watched the bank from her car with her husband while Defendant was in the bank. As soon as Defendant entered the bank, he yelled, "get down, everybody on the floor, and no dye packs." Defendant collected cash from the tellers then left the bank. Defendant robbed the bank of \$6,444.

After the Andover Bank robbery, the witness outside the bank and her husband saw Duncan come out of the bank so she called the police. While Defendant was inside the bank, the

outside witness saw Defendant's vehicle parked in a cemetery behind the bank and she took photographs of the vehicle. While Defendant was running to his vehicle through the cemetery, the witness saw the red dye packs activating from the bag he was carrying as currency fell out of the bag. Defendant arrived at his vehicle, then drove off while the witness and her husband remained in contact with law enforcement while they followed Defendant in their vehicle.

As Defendant was fleeing from the bank, law enforcement notified the Principal at Austinburg Elementary School of the Andover Bank robbery and instructed the Principal to put the school on lockdown since the elementary school was close to the bank.¹ After the call from law enforcement, all exterior doors were locked and the curtains and blinds were closed throughout the school. Team meetings were canceled because of the lockdown and teachers and staff were sent home early. (See attached Exhibit 1; Austinburg Elementary School Principal Amy Burzanko letter.)

After he returned to his car in the cemetery, Defendant fled the scene at a high rate of speed. Defendant drove over a resident's lawn where his bumper fell off in the yard; however, he continued to flee until one of his front tires detached from the rim. Defendant then abandoned the car in a wooded area near the Grand River and fled on foot. Law enforcement searched for Defendant for over 2 hours before he was arrested after an elderly homeowner called the police and reported that a white male was attempting to steal her Honda automobile.

Law enforcement recovered most but not all of the \$6,444 in funds robbed from Andover Bank. \$1,814 of dye stained currency was recovered from Defendant's vehicle, \$3,094 in red

¹ Austinburg Elementary School is about a half mile from Andover Bank and although the elementary school students were not there on August 21, 2018, because the first day of school was the next day, staff was there to prepare for the first day of classes.

stained currency was recovered in the cemetery, \$1,194 was recovered from Defendant's person and a citizen turned over \$105 in currency found near the bank, for a total of \$6,207 in total funds recovered; consequently, Andover Bank's restitution loss is \$237.

After his arrest, Defendant confessed to robbing all four banks.

III. GOVERNMENT'S SENTENCING POSITION

The parties have entered into a plea agreement which includes an agreement that the parties agree to recommend that the Court impose a sentence within the agreed guideline range set forth in the plea agreement. (Doc# 27; PageID# 79; *Plea Agreement.*)

At the time of the four bank robberies charged in this case, Defendant was on supervised release for armed bank robbery in Case No. 1:07 CR 429 for which he was sentenced to a 130 month term of custody to be followed by 3 years of supervised release (Doc# 28 *SEALED* PageID# 101). During the 2007 bank robbery, Defendant entered a KeyBank branch on July 3, 2007, and handed a teller a demand note that said, "Tell everyone to come by you right now. No alarms or everyone dies."

Defendant's convictions in the instant case result in violations of his supervised release in Case No. 1:07 CR 429, which results in a revocation range of imprisonment of 27 to 33 months, based on the new law violations being Grade A violations and Defendant's Criminal History Category being II at the time the original sentence was imposed. Based on the nature and circumstances of the violating conduct, the Government believes that the sentence for the supervised release violation should be served consecutive to the sentence imposed for the 2018 bank robberies.

The 2018 bank robberies involved multiple victims. In fact, one of the teller victim's at the Dollar Bank in Parma on August 6, 2018, was so gripped with fear that she "froze in fear" and another teller had to retrieve the teller drawer money Defendant was demanding from her. In addition to the trauma suffered by the multiple victims at the four banks that were robbed, an entire elementary school staff was disrupted and sent home early because of the Andover Bank robbery on August 21, 2018, (Government Exhibit 1).

18 U.S.C. § 3553(a)(1) states that the court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

Defendant engaged in a continuing course of violent threatening conduct over a period of weeks in which multiple innocent victims were placed in fear for their lives. The *Presentence Investigation Report* ("PSR") references five employees in the bank at the July 17, 2018, PNC Bank robbery in Ravenna, three employees in the bank at the August 6, 2018, Dollar Bank robbery in Parma, six employees in the bank at the August 14, 2018, KeyBank robbery in Parma Heights, and although there is no reference to the number in the PSR, there were at least two employees in the bank during the August 21, 2018, Andover Bank robbery (PSR Doc.#29

SEALED PageID#115).

In addition, there were a number of customers present in these banks at the time of the robberies and Defendant's last bank robbery resulted in a local elementary school going on

lockdown and shutting down early. Further, Defendant engaged law enforcement for over two hours as he fled from the Andover bank robbery and he tried to steal an elderly homeowner's automobile as he fled the police.

After serving a 130 month prison term for bank robbery, Defendant was released from custody on October 20, 2017, and began serving the 3 years of supervised release term of his sentence. Before even completing a year of supervision, Defendant robbed four banks. Given the nature and circumstances of the offenses and the history and characteristics of the defendant, the Government believes that a term of custody at the high end of the guideline range consecutive to a high end term of custody imposed for Defendant's violation of his supervised release is necessary for the safety of the community and to provide just punishment for these offenses.

WHEREFORE, the United States respectfully submits the within Government's Sentencing Memorandum.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ Henry F. DeBaggis
Henry F. DeBaggis (OH: 0007561)
Scott C. Zarzycki (OH: 0072609)
Assistant United States Attorneys
801 West Superior Avenue, Suite 400
Cleveland, OH 441134
(216) 622-3749
(216) 522-7499 (facsimile)
Henry.DeBaggis@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2019, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Henry F. DeBaggis

Henry F. DeBaggis
Assistant U.S. Attorney